

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1651.00
COMPLAINT INVESTIGATOR: Jane Taylor-Holmes
DATE OF COMPLAINT: November 8, 2000
DATE OF REPORT: December 22, 2000
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: February 8, 2001

COMPLAINT ISSUES:

Whether the Griffith School Corporation and the Northwest Indiana Special Education Cooperative violated:

511 IAC 7-27-7 with regard to the school's alleged failure to implement the student's *individualized education program* (the "IEP") as written, specifically, failing to:

- a. provide a structured recess;
- b. provide structured computer time;
- c. provide structured physical exercise with the dyna bike;
- d. follow the behavior plan, and instead utilizing a time-out area, and placing the student in front of other students and having him stand on a line.

511 IAC 7-21-7 with regard to the school's alleged failure to include a written student-specific justification statement in the student's record that the student's transportation time exceeds that of nondisabled students.

The complaint investigation report was originally due on December 8, 2000. However, due to the need to obtain additional information about the Time Out Area, the director granted an extension of time to December 22, 2000.

FINDINGS OF FACT:

1. The student (the "Student") is eleven years old and is eligible for special education and related services as a student with an emotional handicap ("EH"). The Student is in the fifth grade and attends an elementary school (the "School") outside of his local educational agency (the "LEA").
2. The Student's current *IEP* was re-written on September 15, 2000, and states that he participates in the EH classroom 10 hours a week with the rest of his educational services provided in general education. The *IEP* states the following with regard to placement in least restrictive environment.

"[Student's] behaviors have improved and he can tolerate gen. class w/support."

The *IEP* does not indicate that the Student is to have a structured recess, structured computer time, or structured physical exercise with the dyna bike.

3. Although the Student's *IEP* does not indicate such, the local director of special education (the "Director") reported that the Student is provided assistance from a paraprofessional (the "Paraprofessional") during unstructured times such as recess and lunch. The Paraprofessional for

the EH classroom submitted a written schedule of her time with the Student which includes recess, lunch, and when the Student is in the EH classroom. The Paraprofessional is also the individual called when the Student has difficulty in general education and is not responsive to other adults.

4. The Student's behavior plan (the "Behavior Plan") refers to the Student's problem behavior as "meltdowns." The setting or environmental strategies to be utilized are either to provide a safe place for the Student or to provide support in general education as needed. The consequences to be utilized are verbal re-direction, give a choice of "A" or "B", or move to a safe place.
5. The Behavior Plan also includes a crisis contingency plan that states when the Student has a "meltdown in which he verbally or physically threatens or injures self or others" he is removed to a safe place, the parent is called, and a suspension is possible.
6. Although the Behavior Plan does not define a safe place, the Director reported that it can be the EH classroom or home base as it is often referred as, or any other area that is deemed safe for the Student or staff to deal with the Student's behaviors. The Behavior Plan does include a contingency plan when the Student verbally or physically threatens or injures himself or others. In a situation such as that the Student is to be removed to a safe place. The Complainant is to be called and the Student may ultimately be suspended from School.
7. The Director reported that there is a time out area (the "Time Out Area") in the EH classroom and that it is a permanent structure in the EH classroom. The Director also reported that the Complainant is "well aware of this area and has on several occasions picked up his son after he has been placed in the time out area because of out of control behaviors." The Director added that the Complainant "has also spent time in this area when the student was still upset when he arrived." One recent time that the Student was placed in the Time Out Area was November 6, 2000 at the end of the instructional day. On that day the Complainant spent approximately 30 minutes with the Student in the Time Out Area because the Student was so upset.
8. Pictures of the Time Out Area with the dimensions were submitted by the Director. The Time Out Area consists of four walls (three are solid and one contains a door). The walls are 7 and 1/2' high and there is no ceiling. The inside dimensions of the Time Out Area are 6' by 5' 11". The door is 6' 7" high by 3' wide and contains a small window (dimensions not provided) at the top of the door. The door has a one-sided handle located on the outside of the door. It is unclear whether the handle includes a lock. The Director reported that she was unsure whether the door could be locked.
9. The Behavior Plan does not include as a behavior strategy having the Student stand on a line in front of other students. Nor was any documentation submitted by either the Complainant or the School to indicate that the Student has been made to stand on a line in front of other students.
10. The Director reported that the Student attends the School outside of his LEA because "his emotional disability is so severe he needs to attend a special class." The Director reported that the bus picks up the Student at approximately 7:15 a.m. and he arrives at the School at or around 7:50 a.m. The Student is picked up at the School at or around 2:10 p.m and arrives at his home at or around 2:45 p.m. The Director acknowledged that the Student's approximately 35 minute bus ride both ways is longer than most students have who attend a school in the district where the School is located.
11. Page five of the Student's *IEP* lists transportation as a related service. Page six of the *IEP* states "[Student] is not attending his home school, he has a long bus ride." Page eight of the *IEP* indicates that there was a change of placement and the Complainant signed in agreement to that change. The Complainant's signature also indicates that parent rights were explained and that a copy of those rights were provided to the Complainant.

CONCLUSIONS:

- 1.a. b. and c. Findings of Fact #2 and #3 indicate that the Student's *IEP* does not state that the Student is to have a structured recess, structured computer time, or structured exercise with the dyna bike. Therefore, no violation of 511 IAC 7-27-7 is found with respect to these activities.
- 1.d. Finding of Fact #9 indicates that the Behavior Plan does not include having the Student stand on a line in front of other students as a behavior strategy; however, no determination could be made as to whether the Student is made to stand on a line in front of other students. Findings of Fact #4, #5, #6, #7, and #8 indicate that the School has been utilizing the Time Out Area when the Student experiences "meltdowns." However, the Student's Behavior Plan does not specify that the Time Out Area will be utilized; only that the Student will be removed to a safe place. Further, the Behavior Plan does not define what or where a safe place is. A violation of 511 IAC 7-27-7 occurred with respect to placing the Student in the Time Out Area, which is not indicated in the *IEP* or Behavior Plan.
2. Findings of Fact #1, #2, #10, and #11 indicate that the Student's excess transit time is necessary in order for the Student to receive educational services at the School. The Findings also indicate that both transportation as a related service and excess transit time have been included in the *IEP*. Additionally, Finding of Fact #10 indicates that the Complainant gave written consent for the Student's change of placement. No violation of 511 IAC 7-21-7 occurred.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Griffith School Corporation and the Northwest Indiana Special Education Cooperative shall:

1. stop using the Time Out Area for the Student. The School shall reconvene the Student's CCC and revise the Student's Behavior Plan so that it describes how the Student's environment will be altered, identifies positive behavioral intervention strategies, and specifies which skills will be taught in an effort to change the specific behaviors of the Student. The Behavior Plan shall be linked to information gathered through a functional behavioral assessment. To ensure transference, and to maximize consistency of implementation across all personnel and settings in which the Student is involved, a copy of the revised Behavior Plan shall be disseminated to said personnel. A copy of the Student's revised *CCC Report/IEP* and Behavior Plan, along with a list of all personnel by signature and title indicating receipt of a copy of the Behavior Plan, shall be submitted to the Division no later than January 12, 2001.
2. ensure that all personnel providing services to the Student are made aware that the Time Out Area is no longer to be used as a time out area for the Student. An assurance statement that appropriate personnel (listed by name and title) have been notified that the Time Out Area is no longer to be used for this Student shall be submitted to the Division no later than January 12, 2001.
3. submit a statement by the Director assuring that the Time Out Area shall not be used for the Student. The assurance statement must be submitted to the Division on later than January 9, 2001.
4. continue to work with the Division and the Office of the Fire Marshall until resolution is achieved in determining any needed modifications to and/or the continued use of the Time Out Area for all students.

